IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PEITION NO.1839 OF 2004

Bandra Trilok Co-op.Hsg. Soc. Ltd. ...Petitioner.

Versus

State of Maharashtra & Ors. ...Respondents.

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Mrs.Shaila V. Pathak for the Petitioner.
Mr.Milind More for Respondent Nos.1 to 3.
Mr. Anil Singh with Mr. S.R. Rajguru for Respondent No.4.

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CORAM : DR. D.Y. CHANDRACHUD, J.

September 28, 2006.

P.C.:

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. By an order dated 8th January 2001, the Deputy Registrar, Co-operative Societies, H/West Ward, Mumbai, allowed the application filed by the Fourth Respondent and granted to the Fourth

Respondent membership of the Petitioner, which is a Co-operative Housing Society, in respect of Shop Nos.8, 9 and 10. The aforesaid order was confirmed in appeal by the Divisional Joint Registrar on 7th May 2004.

3. At the hearing of the petition, it has been submitted on behalf of the Petitioner that under the sanctioned building plan, the premises which are now described as Shop Nos.8, 9 and 10 were in fact garages appurtenant to flats in the main building. Counsel has also relied upon the assessment record of the Municipal Corporation. On the other hand on behalf of the Fourth Respondent, it has been submitted that since the year 1977, Harbansingh was the occupier of Shop Nos.8, 9 and 10. According to the Fourth Respondent, his father Shri Meghraj Ahuja purchased Shop Nos.8 and 9 from Harbansingh and Shop No.10 from one Shri Thomas John. The father of the Fourth Respondent expired on 4th September 1999. It is stated that on 25th October 1999, a family arrangement was entered into by the legal heirs of the deceased under which the premises of Shop Nos.8, 9 and 10 came to the share of the Fourth Respondent.

The contention of the Fourth Respondent is that when he applied on 13th November 1999 to the Co-operative Society seeking membership, the Society by its Advocate's letter dated 8th December 1999 informed him that membership will be subject to the registration of the agreement. The Fourth Respondent contended that all the documents were registered and a receipt was furnished to the Co-operative Society despite which membership was not granted. The Fourth Respondent filed an appeal under Sections 22 and 23 of the Maharashtra Co-operative Societies' Act, 1960. The orders passed therein were challenged before this Court and an order of remand was passed by a Learned Single Judge of this Court on 3rd February 2004 in Writ Petition 2204 of 2003. Upon remand the Divisional Joint Registrar has by his order dated 7th May 2004, dismissed the said revision.

4. At the hearing of the petition, a large number of documents have been relied upon on behalf of either side. The documents which have been relied on behalf of the Fourth Respondent have not been produced before the authorities below. The Court is informed

that the Fourth Respondent had filed a dispute before the Co-operative Court (324 of 1993) for challenging the resolution of the Co-operative Society by which the Society decided on 24th January 1993 that thereafter no transfer in respect of the garages would be permitted as independent units, the garage being appurtenant to flats. Counsel appearing on behalf of the Fourth Respondent states that the dispute before the Co-operative Court was dismissed in default in the year 1995.

5. In my view, having regard to the rival contentions between the parties, it is necessary that all the documentary material on which reliance was placed before this Court for the first time should be considered in the first instance by the Deputy Registrar. In the exercise of the writ jurisdiction under Article 226 of the Constitution it would not be appropriate for this Court to consider the documentary material for the first time when the authorities below have not had the benefit of considering the same. Several disputed questions of fact also arise which would warrant consideration by the Deputy Registrar. It is stated on behalf of the Fourth Respondent that the Society has

given nominal membership to a large number of shop owners who have residential flats. On the other hand, Counsel appearing on behalf of the Co-operative Society has countered the submission by asserting that no transfers have been permitted after the resolution passed by the Society on 24th January 1993. By the interim order passed on 30th July 2004 in these proceedings, it was observed that it would be open to the Fourth Respondent, if so advised, to apply for nominal membership without prejudice to his rights and contentions. The Society is not granting the application for nominal membership for the reason that the garage which is in occupation of the Fourth Respondent is being used for commercial purpose and the Fourth Respondent does not agree to discontinue that user. .

6. In this state of the record, I had suggested to both the Counsel that the appropriate course of action would be, for the parties to produce documents which were relied upon by them before this Court on record before the Deputy Registrar, so that a fresh order can be passed in the light of the entire material. Both the Counsel have accepted the suggestion and requested for a time bound

programme for the early disposal of the case. In these circumstances, by consent the following order is passed:

(i) The impugned orders of the Deputy Registrar, dated 8th January 2001 and of the Divisional Joint Registrar dated 7th May 2004 are quashed and set aside. The proceedings are remitted back to the Deputy Registrar, for a fresh decision after the parties are heard;

(ii) The Fourth Respondent shall file all documentary material which he seeks to rely upon within a period of four weeks. Counsel appearing on behalf of the Petitioner states that further material sought to be relied upon by the Co-operative Society shall be filed within two weeks thereafter;

(iii) The Deputy Registrar, is requested to endeavour an expeditious disposal of the application filed by the Fourth Respondent preferably within a period of four months after all documents are filed;

(iv) The Fourth Respondent will be at liberty to pursue

appropriate proceedings in accordance with law to espouse his rights and contentions in respect of the resolution of the Co-operative Society dated 24th January 1993. All the rights and contentions in that regard are kept open.

7. The petition is disposed of in the above terms. No costs.

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